

(FEDERAL MARITIME COMMISSION)
(SERVED MAY 20, 1988)
(EXCEPTIONS DUE 6-13-88)
(REPLIES TO EXCEPTIONS DUE 7-5-88)

FEDERAL MARITIME COMMISSION

NO. 87-16

HALLIBURTON COMPANY

v.

DANSK STEAMSHIP LINES AND PETER PETERSON

1. Where Respondents collected freight charges from the Complainant in excess of the charges allowable under the tariff in effect at the time the pertinent shipments took place, they violated section 10(b) of the Shipping Act, 1984.
2. Where Respondents collected freight charges from the Complainant which exceeded those charges allowable under the pertinent tariff by \$29,281.47, the Complainant is entitled to reparation for that amount, plus applicable interest, under section 11(g) of the Shipping Act, 1984. The Respondents are jointly and severally liable for payment of reparations and interest.

Edward M. Keech for Complainant.
Peter Peterson for Respondents.

INITIAL DECISION¹ OF JOSEPH N. INGOLIA,
ADMINISTRATIVE LAW JUDGE

¹ This decision will become the decision of the Commission in the absence of review thereof by the Commission (Rule 227, Rules of Practice and Procedure, 46 CFR 502.227).

Facts

1. On July 20, 1987, Halliburton Company (the "Complainant") filed a complaint against Dansk Steamship Lines ("Dansk") and Peter Peterson alleging that Dansk had violated section 10(b)(1), Shipping Act, 1984, 46 U.S.C app. 1709(b)(1), by charging, demanding, collecting, or receiving greater compensation for the transportation of certain commodities than the rates shown in Dansk's applicable tariff. (Complaint)

2. On or about July 20, 1984, and August 2, 1984, GeoVann Inc., shipped Charges, Shaped, Commercial from Oakland, California, to Singapore. (Declaration of Lyn Beaty with attached Bills of Lading Nos. D-6264 and D-834, respectively)

3. The Complainant paid Dansk \$15,994.10 for the first shipment which amount was comprised of a Crating Charge of \$1,382.00 and a "Special Quote" of \$14,612.00. The Complainant paid Dansk \$22,475.60 for the second shipment which amount was comprised of a Crating Charge of \$2,019.60 and a "Special Quote" of \$20,456.00. (Declaration of Lyn Beaty with attached Bills of Lading, a GeoVann check and a payment request)

4. At the time the shipments took place Dansk's tariff did not contain a specific commodity rate for Charges, Shaped, Commercial, nor did it contain a "Special Quote" item. Instead, it contained a Cargo N.O.S. (Not Otherwise Specified) rate of \$300 per 1000 kilos or cubic meters, whichever produces the greater revenue (Item 100). The rate is contained on original page 23, effective February 24, 1983. (Letter dated January 28,

1985, from Carlos D. Niemeyer, FMC District Investigator, attached original tariff page 23)

5. Under the \$300 Cargo N.O.S. rate the freight charge for the July 24, 1984, shipment (exclusive of Crating Charge) should have been \$2,354.00 and not \$14,612.00 as freighted. The freight charge for the August 2, 1984, shipment should have been \$3,432.50 and not \$20,456.00 as freighted. (Complaint; Letter from Carlos Niemeyer)

6. By letter dated July 22, 1987, the Secretary of the FMC served a copy of the Complaint on "Peter Peterson, President, c/o Dansk Steamship Lines, Post Office Box 26610, Sacramento, California 95826." A copy of the one-page letter was returned with the following statement typed on the bottom of the letter:

NOTE: DANSK CEASED OPERATIONS IN OCT. OF 1984 and ALL RATES were quoted to client on hazardous goods PRIOR TO MOVEMENT, and Transworld Tariff Bureau was to file appropriate rates in the Tariff. Th(j)is notice was forwarded to me in Seattle, Wn, and am replying to advise Dansk is Not in Business, but that the Rates Were ordered taariffized prior to movement to be legal.

Thank you very much,

Peter Peterson
2814 Marginal Way (Temp Address)
Seattle, Wn. 98107

(Status Report of Edward M. Keech filed on January 15, 1988, with attachment, Ex. A)

7. On September 1, 1987, counsel for Complainant wrote to Respondents, certified mail. The correspondence was returned as undeliverable. (Status Report of Edward M. Keech, with attachments, Exs. B through D)

8. By Procedural Order dated January 6, 1988, the parties were ordered to file a status report in this proceeding. The Respondents did not file such report. (Procedural Order dated January 6, 1988)

9. By Procedural Order dated February 9, 1988, the parties were advised that an Order to Show Cause was contemplated against the Respondents and noted that the Respondents' identity needed to be clarified, requesting certain information. (Procedural Order dated February 9, 1988)

10. In response to the Procedural Order referred to in paragraph (9) above, the Complainant indicated that it had checked with the California Secretary of State and had found that Dansk "is not, and never has been, a foreign corporation registered to do business in California." (Declaration of Edward M. Keech in Response to Procedural Order)

Ultimate Findings of Fact

11. The rates charged the Complainant by Dansk for the shipments involved here did not comply with the rates on file in Dansk's tariff.

12. In charging improper rates Dansk violated section 10(b) of the Shipping Act, 1984, 46 U.S.C. app. 1709(b), and may be sued for reparation under section 11(g), 46 U.S.C. app. 1710(g), of said Act.

13. Dansk overcharged Complainant a total of \$29,281.47 on the two shipments involved here, and Complainant is entitled to that amount, plus interest.

14. Dansk is a sole proprietorship, not a corporation, and was owned and operated by Respondent Peter Peterson in 1984 when the shipments involved here took place and Complainant is entitled to a judgment against Peter Peterson as well as Dansk.

Discussion and Conclusions

Section 10(b) of the Shipping Act, 1984, 46 U.S.C. app. 1709(b), provides:

COMMON CARRIERS.--No common carrier, either alone or in conjunction with any other person, directly or indirectly, may--

(1) charge, demand, collect, or receive greater, less or different compensation for the transportation of property or for any service in connection therewith than the rates and charges that are shown in its tariffs or service contracts;

The facts as found in this proceeding clearly demonstrate that the Respondents violated the provisions quoted above. Whatever may have taken place preliminarily between the Complainants and the Respondents regarding the shipments involved here, the fact is that the tariff rate on file resulted in tariff charges that were \$29,281.47 less than those paid to the Respondents by the Complainant, and the latter is entitled to relief.

Section 11(g) of the Shipping Act, 1984, 46 U.S.C. app. 1710(g), provides:

(g) REPARATIONS.--For any complaint filed within 3 years after the cause of action accrued, the Commission shall, upon petition of the complainant and

after notice and hearing, direct payment of reparations to the complainant for actual injury (which, for purposes of this subsection, also includes the loss of interest at commercial rates compounded from the date of injury) caused by a violation of this Act plus reasonable attorney's fees. Upon a showing that the injury was caused by activity that is prohibited by section 10(b)(5) or (7) or section 10(c)(1) or (3), the Commission may direct the payment of additional amounts; but the total recovery of a complainant may not exceed twice the amount of the actual injury. In the case of injury caused by an activity that is prohibited by section 10(b)(6)(A) or (B) of this Act, the amount of the injury shall be the difference between the rate paid by the injured shipper and the most favorable rate paid by another shipper.

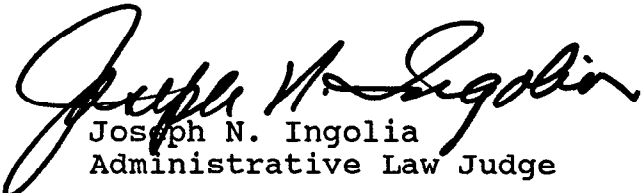
Here, then, the Complainant is entitled to reparations of \$29,281.47, plus the applicable interest due under the Commission's regulations. Rules of Practice and Procedure, Part 502.253, 46 CFR 502.253. In so holding it should be noted that as to Dansk, its liability arose because it had a tariff on file with the Commission and because it undertook to carry the cargo for the Complainant. That liability would follow Dansk, whether it was a corporation or a proprietorship. As to Respondent Peterson, he is liable as the operating head and sole proprietor of Dansk. If Dansk were a corporation there might be some question as to his culpability. However, it has been found as fact that Dansk was not a corporation with limited liability but rather was a proprietorship, and therefore, it is held that Respondent Peterson is jointly and severally liable with Dansk.

Finally, with respect to Respondent Peterson, it should be noted that every effort has been made to have him appear in this proceeding to offer whatever defense he deems appropriate. Despite the fact that he initially acknowledged receipt of the

Complaint and commented on it in correspondence to the Commission's Secretary, he has neither acknowledged nor responded to further attempts to contact him, and has ignored Procedural Orders requiring his participation. Under those circumstances, there is no other alternative but to find in favor of the Complainant against both Respondents.

In its Complaint, and in subsequent pleadings, the Complainant prays for award of attorney's fees. The Commission's Rules, section 502.254, 46 CFR 502.254, provide that such fees may be awarded. The Complainant's attention is directed to paragraphs (b) and (c) of the aforementioned section which spell out the details of a claim for attorney's fees.

In summary, it is held that the Respondents, Dansk and Peterson, violated section 10(b) of the Shipping Act, 1984, by charging more for the carriage of cargo than the tariff allowed. Further, the Complainant is entitled to reparations under section 11(g) of the Shipping Act, 1984, in the total amount of \$29,281.47, plus interest, and the Respondents are hereby directed to pay such reparations to the Complainant no more than sixty (60) days from the date this decision becomes final.


Joseph N. Ingolia
Administrative Law Judge

Washington, D.C.
May 18, 1988

(S E R V E D)
(June 28, 1988)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 87-16

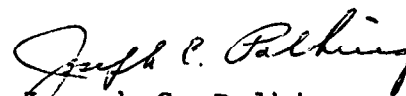
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NOTICE

Notice is given that no exceptions were filed to the May 20, 1988, initial decision in this proceeding and the time within which the Commission could determine to review that decision has expired. No such determination has been made and accordingly, that decision has become administratively final.


Joseph C. Polking
Secretary